

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

CRISTIE C. McGUIRE
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4199
TELEPHONE (619) 236-6220
FAX (619) 236-7215

MEMORANDUM OF LAW

DATE: February 26, 1997
NAME: Scott Tillson, Chief of Staff, Council District No. 1
FROM: Cristie C. McGuire, Deputy City Attorney
SUBJECT: Time to Commence Recall

This is in response to your e-mail request of February 7, 1997, inquiring about the City's recall provisions.

QUESTION

In the City's law describing officeholders subject to recall, does the phrase "Councilmember who was elected by district vote and has held office for six (6) months or more" apply only to a Councilmember's current term, or does it include past terms served?

SHORT ANSWER

Under the City's laws, recall proceedings may not be commenced against an elected official until six (6) months have elapsed from the commencement of the current term.

DISCUSSION

San Diego Municipal Code (SDMC) section 27.2701 entitled "Officials Subject to Recall" states in relevant part: "A City Councilmember who was elected by district vote and has held office for six months or more, and against whom no recall petition has been filed within the preceding six (6) months, may be recalled. . . ."

In 1985, the City Attorney's office examined virtually identical language in light of an attempted recall of former Mayor Hedgecock. Mayor Hedgecock had been sworn into a second term on December 3, 1984, and on January 11, 1985, someone started to circulate a recall petition.

On January 25, 1985, Deputy City Attorney Stuart Swett sent a Memorandum of Law to the City Clerk advising him not to commence recall proceedings against the Mayor on the grounds that the Mayor had not held office in the current term for more than six (6) months. A copy of that memorandum is attached.

Although SDMC section 27.2701 has been amended since that memorandum was written, the amendments do not affect the language at issue in your question. California Elections Code section 27008, which was cited in support of the conclusion reached in that memorandum, has also been amended since the 1985 memorandum was written. Stat. 1994 ch. 920 § 2. Those amendments did not make substantive changes in the law. Rather, they simply reorganized and renumbered state election laws. The 1985 memorandum continues to be valid.

CONCLUSION

Recall proceedings cannot be commenced until six months into the current term of a City officeholder.

CASEY GWINN, City Attorney

By

Cristie C. McGuire
Deputy City Attorney

CCM:SPR:jrl:011::(x043.2)

Attachment

cc: Mayor and Councilmembers
City Clerk

ML-97-7

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